

**SENTENCING MEMORANDUM TO THE COURT RE: PROPOSITION 200
CONVICTIONS ARE HISTORICAL PRIOR FELONY CONVICTIONS FOR PURPOSES
OF SENTENCING ENHANCEMENT UNDER A.R.S. § 13-604**

A decision of the Court of Appeals binds the Superior Court, even though the decision is not yet final, either because a petition for review is pending or because the mandate has not yet issued. The Superior Court must follow the decision as soon as it is issued.

On May 23, 2002, the Court of Appeals of Arizona, Division One, published an opinion in *State v. Christian*, ___ Ariz. ___ (374 Ariz. Adv. Rep. 3), 47 P.3d 666 (App. 2002). In the opinion, the Court interpreted both A.R.S. § 13-901.01 and A.R.S. § 13-604(V)(1). The Court held that “a conviction under Proposition 200 for narcotics possession under the threshold amount can be a historical prior felony conviction.” *Christian* at ¶ 1. The Court agreed with the State’s position that “nothing in the language of A.R.S. § 13-901.01 precludes a conviction under that section from being used as a historical prior felony conviction under A.R.S. § 13-604(V)(1).” *Id.* at ¶ 6.

In this case, the defendant has two prior convictions for class 4 felony offenses, even though probation was mandatory for those offenses under A.R.S. § 13-901.01. Since they were committed within the five years preceding the current offense, the defendant's prior convictions are historical prior felony convictions under A.R.S. § 13-604(V)(1)(c). Therefore, under *Christian*, this Court must sentence the defendant as having two historical prior felony convictions.

The defense argues that *Christian* does not bind this Court in sentencing the defendant here because no mandate has been issued, so the *Christian* case is still subject to review. This argument is unfounded because *Christian* is good law and this Court must follow it. As soon as the Court of Appeals publishes an Opinion, the judges of the superior court must follow that Opinion. “The superior court is bound by decisions

of the court of appeals; its precedents furnish a proper guide to that court in making its decisions.” *Francis v. Arizona Department of Transportation*, 192 Ariz. 269, 963 P.2d 1092 (App. 1998). In *Francis*, the trial judge issued a ruling involving the construction of a particular statute. The State filed a motion for reconsideration, noting that a recent Court of Appeals opinion had construed the statute in question differently. The trial court refused to follow the Court of Appeals decision. On appeal, the Court of Appeals found that the judge was “clearly wrong in refusing to follow this court’s decision.” *Id.* at 271, ¶ 10, 963 P.2d at 1094. The Court said:

The fact that a petition for review was pending before our supreme court at the time of the motion for reconsideration does not diminish [the new case’s] significance as precedent. As to the trial court, [the new case] because binding precedent when it was published. It remains so until this court, in a published opinion, refuses to follow it or it is vacated by our supreme court. Whether [the new case] is to be disaffirmed is not a question for the superior court. A lower court cannot refuse to follow the rulings of a higher court. This would bring about a deadly conflict between the jurisdiction and power of the appellate courts and the superior courts of this state. Any other rule would lead to chaos in our judicial system.

Francis v. Arizona Department of Transportation, 192 Ariz. 269, 271, ¶ 11, 963 P.2d 1092, 1094 (App. 1998 [citations and internal quotation marks omitted]). Thus, *Christian* binds this Court and this Court cannot disregard the defendant’s historical prior felony convictions.

CONCLUSION

In *Christian*, the Arizona Court of Appeals held that a defendant’s Proposition 200 convictions are historical prior felony convictions for purposes of sentencing enhancement. *Christian* binds this Court. Therefore, the State asks this Court to find that the defendant has two historical prior felony convictions for purposes of sentencing enhancement and sentence him accordingly.

